

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE SMITH,

Petitioner,

Case No.02: 11-CV-13599

Hon. Lawrence P. Zatkoff

v.

ROBERT KLEE,

Respondent.

**OPINION AND ORDER DISMISSING THE PETITION FOR A WRIT OF HABEAS
CORPUS AND DENYING A CERTIFICATE OF APPEALABILITY**

The Court has before it Willie Smith's pro se petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner is a prisoner currently confined at the Gus Harrison Correctional Facility where he is serving a sixteen months-to-two year sentence being served consecutively with a two year sentence for his convictions of delivery of marijuana, MICH. COMP. LAWS 333.7401(2)(D)(3), possession of under twenty-five grams of cocaine, MICH. COMP. LAWS 333.7403(2)(A)(5), and possession of a firearm during the commission of a felony. MICH. COMP. LAWS 750.227b. Petitioner did not pay the required filing fee when he filed his petition, nor did he submit an application to proceed in forma pauperis. *See* 28 U.S.C. § 1914(a); 28 U.S.C. § 1915; Rule 3 of the Rules Governing § 2254 Cases. The Court, therefore, issued an Order to Correct Deficiency on August 23, 2011 requiring Petitioner to either pay the filing fee or submit a properly completed in forma pauperis application. The order provided that if Petitioner did not submit the fee or requested information within 21 days, his case would be dismissed.

The time for submitting the filing fee or required information has elapsed and Petitioner has failed to correct the deficiency. Accordingly, the Court **DISMISSES WITHOUT PREJUDICE** the petition for a writ of habeas corpus. Petitioner may submit a new habeas petition with payment

of the filing fee or an in forma pauperis application. The Court makes no determination as to the merits of Petitioner's claims.

Before Petitioner may appeal this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." U.S.C. § 2253(c)(2). When a federal court denies a habeas claim on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Reasonable jurists could not debate the correctness of the Court's procedural ruling. Accordingly, the Court **DENIES** a certificate of appealability.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: October 3, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on October 3, 2011.

S/Marie E. Verlinde
Case Manager
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